IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2428 OF 2004
IN
APPEAL NO.839 OF 1998
IN
SUIT NO.1977 OF 1981

M/s.Ashik Gems & Others .. Appellants.
V/s.
Corporation Bank .. Respondent.

Mr.Satish Shetye with Mr.Jaydeep Raut i/b. Little & Co. for the appellants.

Mr.Chirag Balsara i/b. Kanga & Co. for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 29TH SEPTEMBER, 2004.

P.C. :

By this notice of motion, the appellants seeks production of additional evidence and amendment in the memo of appeal.

2. The notice of motion is opposed by the respondent.

3. In so far as prayer for production of additional evidence is concerned, we are of the view that the leave does not deserve to be granted to the

appellants to produce additional evidence. As a matter of fact on the basis of the pleadings of the parties issue No.6A was struck to the effect whether the plaintiffs have recovered the suit claim or any amount thereof from ECGC under the ECGC policy. It appears that during the trial, notice was given by the present appellants (defendants) to the respondent (plaintiff) to produce ECGC policy. The plaintiff did produce the policy but the defendants (present appellants) did not get the said policy tendered in the court. The plaintiffs witness P.W.No.1 in his deposition stated that under ECGC policy, interest liability of the bank stands covered and not the liability of the borrower. The deposition of P.W. No.1 further shows that the proportionate amount as settled by the ECGC has been returned to the ECGC when the bank received the amount from the Official Assignee from Singapore. The defendants ought to have cross-examined P.W.No.1 to elicit the necessary facts regarding the amount paid by ECGC to the bank under the ECGC guarantee, the date/s on which such payment was made and the date/s on which proportionate amount was returned to ECGC but that was not done. The defendants also did not take any steps in getting necessary information from ECGC about the payment made by them to the plaintiff. Had

the defendants acted with due diligence, all that what is now sought to be produced would have been available and could have been produced. In these circumstances, we are satisfied that no case for production of additional evidence is made out. Prayer (b) of the notice of motion is, accordingly, rejected.

4. As regards the amendment of the memo of appeal, we are of the view that the grounds set up by the appellants in para 4 and 9 of schedule ‘A’ may be permitted to be raised in the memo of appeal and to that extent we are inclined to grant leave to the appellants.

5. The notice of motion is, accordingly disposed of by the following order :

i) Prayer (b) of the notice of motion is rejected.

ii) Leave is granted to the appellants to amend the memo of appeal by raising additional grounds namely grounds 4 and 9 as set out in schedule ‘A’ in the memo of appeal.

iii) Necessary amendment be carried out in the memo of appeal within one week from today.

iv) Post the appeal for hearing after one week.

6. The notice of motion stands disposed of.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)